UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

JACQUELINE ANDERSON,

Defendant.

07-M-1050-JJM

NOTICE OF MOTION

MOTION BY: Kimberly A. Schechter, Assistant Federal Defender, Attorney for Defendant.

DATE, TIME & PLACE: Before the Honorable Jeremiah J. McCarthy, United States Magistrate Judge, United States Courthouse, 68 Court Street, Buffalo, New York, **on a date to be set by the Court.**

SUPPORTING PAPERS: Affirmation of Kimberly A. Schechter, dated July 11, 2007.

RELIEF REQUESTED: Reconsideration of the Order of Detention entered July 3, 2007.

DATED: Buffalo, New York, July 11, 2007.

/s/ Kimberly A. Schechter
Kimberly A. Schechter
Assistant Federal Defender
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Counsel for Defendant Jacqueline Anderson

TO: James P. Kennedy
Assistant United States Attorney

Tina E. Blackman
United States Probation Officer

AO 72A
(Rev. 8/82)

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AFFIRMATION

KIMBERLY A. SCHECHTER, affirms under penalty of perjury that:

1. I am an Assistant Federal Defender in the Western District of New York, and on June 26, 2007, was assigned to represent Jacqueline Anderson. I make this affirmation in support of her motion for reconsideration of this Court's Order of Detention, dated July 3, 2007, (Document #4).

2. This Court conducted a detention hearing on June 28, 2007. On that day, the government presented a witness, ICE Senior Special Agent Brian L. Korzak, who testified that if Jacqueline Anderson were to be released on bail, she would either be deported to Jamaica, or returned to Canada, which country, in turn, would deport her to Jamaica. He also testified that she would not remain in the United States lawfully during the pendency of these proceedings.

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3. The Court accepted his testimony and, concluding that the defendant lacked ties to the community and considering the nature of the charges pending against her, decided that detention was warranted.

4. While, at the time, I believed Agent Korzak's testimony was accurate, I recently learned that it was not when I came across a similar case, *United States v. George Newton* (06-CR-441-S), WDNY, 2006. In *Newton*, Judge Skretny released the alien defendant, who was then permitted to remain in the United States. Mr. Newton appeared at the United States/Canadian border and presented identification documents bearing the name of another. In particular, he presented a Canadian citizenship card, an expired Ontario driver's license, and an expired Ontario health card. Mr. Newton also claimed to be a United States citizen, but he was not, having been born in Guyana. Mr. Newton had never been lawfully admitted to the United States. Mr. Newton pled guilty and on January 22, 2007, Judge Skretny released him from custody and he is presently living in the United States. (*See Newton* docket sheet for complaint, plea agreement and order setting conditions of release.)

5. In comparison, Ms. Anderson is alleged to have come to the border, also declaring herself to be a United States citizen, and presented a birth certificate and a driver's license in the name of another. Unlike Mr. Newton, she did not present a false Immigration or citizenship card. Ms. Anderson was born in Jamaica. The government conceded at the detention hearing that, at one point, Ms. Anderson had been lawfully admitted to the United States on a 10 year visa which was to expire in 2008, but argued that it has been rendered invalid.

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6. The authority permitting non-immigrants to remain in the United States during the pendency of their criminal cases is found in the Immigration and Nationality Act and regulations issued thereunder. 8 U.S.C. § 1182. Section (d)(5)(A), entitled **Temporary admission of non-immigrants**, permits the Attorney General, in his discretion, to temporarily parole into the United States any alien applying for admission under such conditions as he may prescribe on a case by case basis for urgent humanitarian reasons or significant public benefit.

7. The law then provides that the Attorney General is to put in place a method and procedure for such temporary admission. 8 U.S.C. § 1182(d)(7). Those procedures were promulgated and are contained in 8 C.F.R. §§ 212.4 and 214.2. Section 214.2 sets forth special requirements and permits extensions of the temporary parole status in the United States. It is believed that this is the same mechanism which the immigration officers routinely use to allow defendants to enter into the United States to face federal charges, including custodial arrests at the border.[1]

8. Like Mr. Newton, Ms. Anderson should be permitted to be released from custody and be given an opportunity to remain free in the United States pending disposition of this case. She has no prior arrests. She has ties in the United States, although not to this particular community. She has very strong community support in the Cleveland area, which is a three hour drive from Buffalo. Her sister lives in New York City. I have received unsolicited phone calls

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[1] *See also,* 8 U.S.C.§§1182 (d)(1) and 1101(a)(15(S), the so-called "snitch visa" permitting temporary parole into the United States of non-immigrants upon completion of cooperation if certain conditions are met.

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from individuals in the United States who know her and speak highly of her character and reputation for hard work. Her family and friends are able to offer this Court a modest cash bail of $2,500.00.

9. Ms. Anderson will be entering a plea of guilty on July 31, 2007. This was the first date that could be obtained, despite that fact that the plea terms had been orally agreed to as early as June 29, 2007.[2] Moreover, the district courts typically give the Probation Office three and one-half months to prepare its presentence report. Ms. Anderson is eligible for a sentence of probation. Despite the Court's best efforts in the past to try to expedite these cases, unfortunately, it rarely succeeds due to the Court's heavy calendar. As such, Ms. Anderson is likely to spend approximately five months in jail before she can receive her sentence, in a case where the recommended Sentencing Guideline range is zero to 6 months, making her eligible for mere probation.

10. It is unjust that she should have to remain detained for this length of time, especially when she timely engaged in, and accepted, the plea terms.

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[2] The plea was just scheduled the other day because of delays in the court's response to the government for assignment of the case to a district court judge and then the district court's availability, which was subject to high congestion due to that court's lengthy trial, as well as assignment of some of Judge Elfvin's cases, creating an exceptionally busy docket.

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WHEREFORE, it is respectfully requested that this Court reconsider its prior order of detention and allow Ms. Anderson to post bail in the amount of $2,500.00.

DATED: Buffalo, New York, July 11, 2007.

Respectfully submitted,

/s/ Kimberly A. Schechter
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CERTIFICATE OF SERVICE

I hereby certify that on **July 11, 2007**, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

1. James P. Kennedy
   Assistant United States Attorney
   Western District of New York
   138 Delaware Avenue, Federal Centre
   Buffalo, New York 14202

And, I hereby certify that I have e-mailed the document to the following non-CM/ECF participant(s).

1. Tina E. Blackman
   United States Probation Officer
   United States Probation Department
   404 U.S. Courthouse
   68 Court Street
   Buffalo, New York 14202

/s/Joanne Sabatino
Federal Public Defender's Office

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